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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 28, 30, and 180

[Docket No. FR-5662-F-01]

RIN 2501-AD59

Inflation Adjustment of Civil Money Penalty Amounts

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's civil money penalty and civil penalty regulations by making inflation adjustments that are required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) (FCPIA Act). The FCPIA Act mandates the adjustments and the formula used to calculate them. Also in this final rule, HUD is taking the opportunity to update an outdated cross-reference in its civil money penalty regulations.

DATES: Effective Date: **[Insert date 30 days after date of publication in the FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Dane Narode, Associate General Counsel, Office of Program Enforcement, Department of Housing and Urban Development, 1250 Maryland Avenue, SW, Suite 200, Washington, DC 20024; telephone number 202-245-4141 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) (FCPIA Act), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701) (DCIA), requires each federal agency to make inflation adjustments to its maximum civil money penalties and civil penalties. The formula for determining the specific adjustment of such penalties for inflation is nondiscretionary and is determined by section 5 of the FCPIA Act. The adjustment is based on the change in the cost-of-living increase, which is defined in the statute as based on the percentage change, if any, in the Consumer Price Index (CPI). The statute also states specific rules for rounding off, first-time adjustments and provides that adjusted civil money penalties and civil penalties can only be applied prospectively; that is, only to violations that occur after the date that the increase takes effect.

II. This Final Rule

A. Inflation Adjustment of Civil Money Penalty and Civil Penalty Amounts

The changes made by this final rule increase the amount of civil money penalties, consistent with statutory authority for 24 CFR parts 28 and 30 and civil penalties consistent with 24 CFR part 180. Additionally, no amendment is necessary to civil money penalties and civil penalties found in some HUD regulations (e.g., 24 CFR parts 30.20, 30.25, and 180.671(a)(1)) because application of the statute's formula would not result in an increase to the penalty.

Applying the statutory formula to determine the amount of the adjustment is a four-step process. The first step entails determining the inflation adjustment factor. This is done by calculating the percentage increase by which the CPI for all urban consumers

(CPI-U) for the month of June of the calendar year preceding the adjustment (i.e., June 2012) exceeds the CPI-U for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted. CPI-U values are available at a Department of Labor, Bureau of Labor Statistics file transfer protocol site, <ftp://ftp.bls.gov/pub/special.requests/cpi/cpiat.txt>. Once the inflation adjustment factor is determined, the second step is to calculate the inflation increase. That is done by multiplying the inflation adjustment factor by the current civil penalty amount. The third step is to round off the inflation increase according to Section 5(a) of the FCPIA Act, as amended by the DCIA. The FCPIA Act provides for a “rounding-off,” using multiples from \$10 to \$25,000, of the increase calculated based on the change in the CPI. See 28 U.S.C. 2461(5)(a). Once the inflation increase has been rounded, the last step is to add the rounded inflation increase to the current civil penalty amount, to obtain the new inflation-adjusted civil penalty amount. Consequently, in those instances in which the increased dollar amount is determined to be less than the applicable multiple, the existing penalty is unchanged. The first time the civil penalty amount is adjusted, the FCPIA Act limits any increase of the civil penalty to no more than 10 percent.

In § 28.10, the maximum penalties for making a false claim or written statement, as described in the regulation, is increased from \$7,500 to \$8,500.

In § 30.35(c)(1), the maximum penalties that the Mortgage Review Board may impose for a series of violations identified in the regulations are increased from \$7,500 to \$8,500 per violation, and from \$1,375,000 to \$1,525,000 for all violations committed during any one-year period.

In § 30.36(c), the maximum penalty that HUD may impose upon participants in Federal Housing Administration (FHA) programs for violations identified in the regulation is increased from \$6,050 to \$7,050, and from \$1,210,000 to a maximum of \$1,335,000 for all violations committed during any one-year period.

In § 30.40(c), the maximum penalty that HUD may impose upon a mortgagee or a holder of a guarantee certificate that violates the statutory provisions concerning loan guarantees for Indian housing is increased from \$7,000 to \$8,000 per violation, and from \$1,375,000 to a maximum of \$1,525,000 for all violations committed during any one-year period.

In § 30.45(g), the maximum penalty that may be imposed upon a mortgagor of a multifamily property or upon any person in a relationship with the mortgagor, as described in the regulations, is increased from \$37,500 to \$42,500 per violation.

In § 30.50(c), the maximum penalty that may be imposed against a Government National Mortgage Association (GNMA) issuer or custodian for a violation of any provision of 12 U.S.C. 1723i(b) or other authorities cited in the regulations is increased from \$7,500 to \$8,500 per violation, and from \$1,375,000 to \$1,525,000 for all violations committed during any one-year period.

In § 30.60(c), the maximum penalty that HUD may impose upon any dealer or sponsored third-party originator for, among other things, falsifying statements or making false representations in violation of section 2(b)(7) of the National Housing Act (12 U.S.C. 1703(b)(7)) is increased from \$7,500 to \$8,500 for each violation, and from \$1,375,000 to a maximum of \$1,525,000 during any one-year period.

In § 30.68(c), the maximum penalty that may be imposed against any owner, any general partner of a partnership owner, or any agent, as described in the regulation, that provides a knowing and material breach of a housing assistance payments contract, is increased from \$25,000 to \$27,500 per violation.

In § 180.671(a)(2) and (3), the maximum penalties that the Administrative Law Judge may impose upon a respondent who is found to have engaged in a discriminatory housing practice is increased from \$37,500 to \$42,500, and from \$65,000 to \$70,000, respectively. The maximum penalty of \$16,000 at § 180.671(a)(1) does not increase under the formula.

B. Correction to 24 CFR 30.90

On December 17, 2008, HUD published a final rule (73 FR 76832) to amend its regulations governing hearing procedures for administrative sanction hearings pursuant to 2 CFR part 2424 and with respect to determinations by the Multifamily Participation Review Committee pursuant to 24 CFR part 200, subpart H. The final rule replaced and reorganized Part 26. As a result, the cross-references to Part 26 in § 30.90 are outdated. This final rule takes the opportunity to correct that by updating the cross-references in § 30.90(c).

III. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's regulations on rulemaking at 24 CFR part 10. Part 10, however, provides in § 10.1 for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is

satisfied when the prior public procedure is “impracticable, unnecessary or contrary to the public interest.”

HUD finds that good cause exists to publish this rule for effect without first soliciting public comment because prior public comment is unnecessary. This final rule merely follows the statutory directive in the FCPIA Act allowing for periodic increases in HUD’s civil money penalties and civil penalties by applying the adjustment formula established in the statute. Accordingly, because calculation of the increases is formula-driven, HUD has no discretion in updating its regulations to reflect the maximum allowable penalties derived from application of the formula. HUD emphasizes that this rule addresses only the matter of the calculation of the maximum civil money penalties or civil penalties for the respective violations described in the regulations. This rule does not address the issue of the Secretary’s discretion to impose or not to impose a penalty, nor the procedures that HUD must follow in initiating a civil money penalty action, or in seeking a civil penalty in a Fair Housing Act case.

IV. Findings and Certifications

Regulatory Review – Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select the regulatory approach that maximizes net benefits. As discussed above in this preamble, this final rule updates an incorrect cross reference and revises the civil money penalty and civil penalty regulations to make inflation adjustments required by the FCPIA Act. As a result, this rule was determined to be not a significant regulatory action under section 3(f)

of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) generally requires an agency to conduct regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule has no economic impact on entities that are in compliance with relevant laws and HUD regulations. This final rule does not establish special procedures that would need to be complied with by small entities. All entities, small or large, could be subject to the same penalties as established by statute and implemented by this rule, but only if they violate a relevant statute or regulation and become subject to civil money penalties or civil penalties. Accordingly, the undersigned certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Environmental Review

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This rule does not impose any federal mandates on any state, local, or tribal government, or the private sector within the meaning of UMRA.

List of Subjects

24 CFR Part 28

Administrative practice and procedure, Claims, Fraud, Penalties.

24 CFR Part 30

Administrative practice and procedure, Grant programs-housing and community development, Loan programs-housing and community development, Mortgages, Penalties.

24 CFR Part 180

Administrative practice and procedure, Aged, Civil Rights, Fair housing, Individuals with disabilities, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 28, 30, and 180 to read as follows:

**PART 28 – IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL
REMEDIES ACT OF 1986**

1. The authority citation for part 28 is revised to read as follows:

AUTHORITY: 28 U.S.C. 2461 note; 31 U.S.C. 3801-3812; 42 U.S.C. 3535(d).

2. Revise § 28.10 (a)(1) introductory text and (b)(1) introductory text to read as follows:

§ 28.10 Basis for civil penalties and assessments.

(a) Claims. (1) A civil penalty of not more than \$8,500 may be imposed upon a person who makes a claim that the person knows or has reason to know:

* * * * *

(b) Statements. (1) A civil penalty of up to \$8,500 may be imposed upon a person who makes a written statement that:

* * * * *

PART 30 – CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

3. The authority citation for part 30 continues to read as follows:

AUTHORITY: 12 U.S.C. 1701q-1, 1703, 1723i, 1735f-14, 1735f-15; 15 U.S.C. 1717a; 28 U.S.C. 2461 note; 42 U.S.C. 1437z-1 and 3535(d).

4. Revise § 30.35(c)(1) to read as follows:

§ 30.35 Mortgagees and lenders.

* * * * *

(c)(1) Amount of penalty. The maximum penalty is \$8,500 for each violation, up to a limit of \$1,525,000 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

* * * * *

5. Revise § 30.36(c) to read as follows:

§ 30.36 Other participants in FHA programs.

* * * * *

(c) Amount of penalty. The maximum penalty is \$7,050 for each violation, up to a limit of \$1,335,000 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

6. Revise § 30.40(c) to read as follows:

§ 30.40 Loan guarantees for Indian housing.

* * * * *

(c) Amount of penalty. The maximum penalty is \$8,000 for each violation, up to a limit of \$1,525,000 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

7. Revise § 30.45(g) to read as follows:

§ 30.45 Multifamily and Section 202 or 811 mortgagors.

* * * * *

(g) Maximum penalty. The maximum penalty for each violation under paragraphs (c) and (f) of this section is \$42,500.

* * * * *

8. Revise § 30.50(c) to read as follows:

§ 30.50 GNMA issuers and custodians.

* * * * *

(c) Amount of penalty. The maximum penalty is \$8,500 for each violation, up to a limit of \$1,525,000 during any one-year period. Each violation shall constitute a separate violation with respect to each pool of mortgages.

9. Revise § 30.60(c) to read as follows:

§ 30.60 Dealers or sponsored third-party originators.

* * * * *

(c) Amount of penalty. The maximum penalty is \$8,500 for each violation, up to a limit for any particular person of \$1,525,000 during any one-year period.

10. Revise § 30.68(c) to read as follows:

§ 30.68 Section 8 owners.

* * * * *

(c) Maximum penalty. The maximum penalty for each violation under this section is \$27,500.

* * * * *

11. Revise § 30.90(c) to read as follows:

§ 30.90 Response to the complaint.

* * * * *

(c) Filing with the administrative law judges. HUD shall file the complaint and response with the Docket Clerk, Office of Administrative Law Judges, in accordance with § 26.38 of this chapter. If no response is submitted, then HUD may file a motion for default judgment, together with a copy of the complaint, in accordance with § 26.41 of this title.

**PART 180 – CONSOLIDATED HUD HEARING PROCEDURES
FOR CIVIL RIGHTS MATTERS**

12. The authority citation for part 180 continues to read as follows:

AUTHORITY: 29 U.S.C. 794; 42 U.S.C. 2000d-1, 3535(d), 3601-3619, 5301-5320, and 6103.

13. Revise § 180.671 (a)(2) and (3) to read as follows:

§ 180.671 Assessing civil penalties for Fair Housing Act cases.

(a) * * *

(2) \$42,500, if the respondent has been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government agency, to have committed one other discriminatory housing practice and the adjudication was made during the 5-year period preceding the date of filing of the charge.

(3) \$70,000, if the respondent has been adjudged in any administrative hearings or civil actions permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government agency, to have committed two or more discriminatory housing practices and the adjudications were made during the 7-year period preceding the date of filing of the charge.

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Date: January 8, 2013

Shaun Donovan,
Secretary

[FR-5662-F-01]

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